



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

LARSON NEWMAN ABEL POLANSKY & WHITE, LLP  
5914 WEST COURTYARD DRIVE  
SUITE 200  
AUSTIN, TX 78730

**COPY MAILED**

MAY 21 2008

**OFFICE OF PETITIONS**

In re Application of :  
Michael Dahlin et al :  
Application No. 10/723,251 : DECISION ON PETITION  
Filed: November 26, 2003 : UNDER 37 CFR 1.78(a)(3)  
Attorney Docket No. 1039-0070 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 22, 2008, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 09/992,035, as set forth in the amendment filed with the petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy item (1) above.

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional application must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the application. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See MPEP Section 201.11, Reference

to Prior Nonprovisional Application. The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

If reconsideration of this decision is desired, a renewed petition under 37 CFR § 1.78(a)(3) and an Application Data Sheet or an amendment (complying with the provisions of 37 CFR 1.121 and 37 CFR 1.76(b)(5)) to correct the above matter is required.


Further correspondence with respect to this matter should be addressed as follows:

By mail:                    Mail Stop PETITIONS  
                              Commissioner for Patents  
                              Post Office Box 1450  
                              Alexandria, VA 22313-1450

By hand:                   Customer Service Window  
                              Mail Stop Petitions  
                              Randolph Building  
                              401 Dulany Street  
                              Alexandria, VA 22314

By fax:                    (571) 273-8300  
                              ATTN: Office of Petitions

Any questions concerning this matter may be directed to Irvin Dingle at (571) 272-3210.

  
David Bucci  
Petition Examiner  
Office of Petitions